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GR

4 December 1980

Sam --

May I strongly invite General Rowny's attention to the article on intelligence guidelines on page A 21 of this morning's New York Times (4 Dec 80). This article is an apparent attempt by Department of Justice staffers to force the Attorney General to release these guidelines in the very near future. (The date 6 December has been suggested.) This is to advise you that the text of these guidelines is still in coordination between CIA and DoJ (CIA being primarily concerned) on certain technical and substantive details. They have not yet been approved, wherefor the leak.

STAT

Walter Pforzheimer

6 Dec
Thanks very
much.
Interesting!
See attached

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U.S. DRAFTS GUIDELINES ON EMPLOYEE SECRECY AGREEMENTS

=EXCLUSIVE 10 P.M. EST EMBARGO=

=BY A.O. SULZBERGER JR.=

=(C) 1980 N.Y. TIMES NEWS SERVICE=

WASHINGTON - THE JUSTICE DEPARTMENT HAS FOR THE FIRST TIME ESTABLISHED THE CONDITIONS UNDER WHICH IT WILL PROSECUTE FORMER AND CURRENT GOVERNMENT EMPLOYEES ACCUSED OF VIOLATING SECRECY AGREEMENTS.

THE GUIDELINES STATE, AS GENERAL PRINCIPLES, THAT BOTH CURRENT AND FORMER GOVERNMENT OFFICIALS WILL BE HELD TO IDENTICAL STANDARDS, REGARDLESS OF THEIR RANK OR INFLUENCE, AND THAT THE POLITICAL CONTENT OF THE DISCLOSURE AS WELL AS THE POLITICAL VIEWPOINT OF THE INDIVIDUAL SHALL NOT BE CONSIDERED IN DECIDING WHETHER TO PROSECUTE.

THE GUIDELINES, WHICH HAVE BEEN TENTATIVELY APPROVED BY BENJAMIN R. CIVILETTI, THE ATTORNEY GENERAL, FOLLOW THE CASE OF FRANK W. SNEPP 3D, A FORMER OFFICER OF THE CENTRAL INTELLIGENCE AGENCY WHO PUBLISHED A BOOK ON THE FALL OF SAIGON WITHOUT THE AGENCY'S SPECIFIC PRIOR APPROVAL. LAST FEBRUARY THE SUPREME COURT RULED THAT SNEPP HAD "DELIBERATELY AND SURREPTITIOUSLY VIOLATED HIS OBLIGATIONS" UNDER AN AGREEMENT HE HAD SIGNED REQUIRING CIA EMPLOYEES NOT TO PUBLISH INFORMATION ABOUT THE AGENCY WITHOUT ITS APPROVAL.

AS A PENALTY THE COURT ORDERED SNEPP TO TURN OVER TO THE GOVERNMENT ALL THE EARNINGS FROM THE BOOK, AND LAST SEPTEMBER SNEPP GAVE THE TREASURY A CHECK FOR $140,000.

THE COURT'S DECISION WAS A COMPLETE VICTORY FOR THE GOVERNMENT, WHICH BROUGHT A CIVIL SUIT FOR BREACH OF CONTRACT AGAINST SNEPP ALMOST THREE YEARS AGO. SNEPP INSISTED THAT HIS BOOK CONTRINED NO CLASSIFIED INFORMATION OR ANY INFORMATION NOT ALREADY IN THE PUBLIC DOMAIN. THE GOVERNMENT HAD NEVER CONTENDED THAT IT DID CONTAIN SUCH INFORMATION..

THE GUIDELINES, WHICH WERE DRAFTED WITH THE CLOSE PARTICIPATION OF THE ATTORNEY GENERAL, ALSO WAIVE ANY INTENTION OF BRINGING SUIT AGAINST AN EMPLOYEE UNLESS AN EXPRESS CLEARANCE OBLIGATION EXISTS. MANY FELT THAT THE SUPREME COURT RULING WAS SO BROAD THAT SUCH A SUIT COULD HAVE BEEN BROUGHT.

BECAUSE OF THE ATTORNEY GENERAL'S CLOSE INVOLVEMENT, IT IS CONSIDERED UNLIKELY THAT THE GUIDELINES WOULD BE CHANGED BY THE NEXT ADMINISTRATION.



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ALL GOVERNMENT AGENCIES THAT HAVE SUCH SECRECY AGREEMENTS ARE AFFECTED BY THE GUIDELINES BECAUSE THEY NEED THE JUSTICE DEPARTMENT TO PROSECUTE ANY CASES. THESE AGENCIES INCLUDE THE CIA; THE FEDERAL BUREAU OF INVESTIGATION; THE DEFENSE INTELLIGENCE AGENCY AND THE NATIONAL SECURITY AGENCY. CURRENTLY EACH AGENCY HAS ITS OWN AGREEMENT WITH DIFFERENT TERMS AND REQUIRES EMPLOYEES AT DIFFERENT LEVELS TO SIGN. HOWEVER; THERE IS SOON TO BE A UNIFORM PREPUBLICATION AGREEMENT FOR ALL INTELLIGENCE-GATHERING AGENCIES.

A COPY OF THE GUIDELINES; WHICH ARE NOT EXPECTED TO BE CHANGED SUBSTANTIVELY; WAS GIVEN TO THE NEW YORK TIMES.

THE ATTORNEY GENERAL WAS SAID TO HAVE BEEN UNCOMFORTABLE WITH THE PUBLIC PERCEPTION THAT THE POWERS HANDED HIS DEPARTMENT BY THE SNEPP DECISION MIGHT BE ARBITRARILY EXERCISED. THE GUIDELINES; ONE JUSTICE DEPARTMENT OFFICIAL SAID; SHOWED THAT THE DEPARTMENT INTENDED TO USE ITS NEW POWERS FOR "LEGITIMATE PURPOSES AND NOT AS A HEAT AX."

UNDER THE GUIDELINES; ONLY THE ATTORNEY GENERAL OR SOMEONE DESIGNATED BY HIM MAY AUTHORIZE THE FILING OF A SUIT.

LAST MARCH THE GOVERNMENT BROUGHT SUIT AGRINST JOHN R. STOCKWELL; ANOTHER FORMER CIA EMPLOYEE; CHARGING BREACH OF CONTRACT. STOCKWELL AGREED IN JUNE TO PAY THE GOVERNMENT FUTURE EARNINGS ON HIS BOOK ABOUT AGENCY ACTIVITIES IN ANGOLA; "IN SEARCH OF ENEMIES; A CIA STORY;" PUBLISHED IN 1978 WITHOUT CLEARANCE.

AMONG THE SPECIFIC CONSIDERATIONS ESTABLISHED BY THE GUIDELINES ARE THESE:

-WHETHER THE INDIVIDUAL WILLFULLY OR INTENTIONALLY FAILED TO SUBMIT MATERIAL HE OR SHE KNEW OR SHOULD HAVE KNOWN MUST BE SUBMITTED FOR REVIEW PRIOR TO DISSEMINATION.

-WHETHER THE INFORMATION DISCLOSED WAS LEARNED IN THE COURSE OF THE INDIVIDUAL'S ASSOCIATION WITH THE GOVERNMENT AND NOT WIDELY AVAILABLE TO MEMBERS OF THE PUBLIC.

-WHETHER THE MATERIAL DISCLOSED CONTRINS INFORMATION THAT IS PROPERLY CLASSIFIABLE.

-WHETHER THE MATERIAL WAS WIDELY DISSEMINATED AND LIKELY TO HARM NATIONAL SECURITY OR THE FOREIGN POLICY OF THE UNITED STATES.

-WHETHER THE DISCLOSURE CONTAINS SPECIFIC INFORMATION ABOUT OPERATIONS; STRUCTURES; PERSONNEL AND THE ACTIVITIES OF THE GOVERNMENTAL AGENCY INVOLVED; AS OPPOSED TO POLITICAL CRITICISMS AND COMMENTARY ABOUT THE AGENCY AND ITS ACTIVITIES.

-WHETHER THE MATERIAL WILL RESULT IN "SUBSTANTIAL HARM" TO AN AGENCY OPERATION OR ENDANGER INDIVIDUAL LIVES.

-WHETHER THE MATERIAL IS LIKELY TO INHIBIT THE FLOW OF INTELLIGENCE INFORMATION.

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THE GUIDELINES ALSO STATE THAT ANY DECISION TO SEEK AN INJUNCTION AGAINST PUBLICATION OF INFORMATION ''IS VIEWED BY THE DEPARTMENT AS AN EXTRAORDINARILY SERIOUS MATTER THAT SHOULD BE UNDERTAKEN AFTER T MOST SEARCHING SCRUTINY OF THE STRENGTH OF THE GOVERNMENT'S CASE.''

THE SIX-PAGE DOCUMENT ALSO ESTABLISHES PENALTY GUIDELINES THAT ARE ALSO CLEARLY AFFECTED BY THE SNEPP CASE.

WHILE STATING THAT A FINANCIAL PENALTY MAY BE SOUGHT IF A SUIT IS AUTHORIZED, THE GUIDELINE GOES ON TO STATE: ''THE GOVERNMENT DOES NO SEEK TO REDUCE DEFENDANTS TO PENURY.''

UNDER THE GUIDELINES, THE FACTORS THAT WILL BE TAKEN INTO ACCOUNT INCLUDE ''THE DEGREE OF CARE'' EXERCISED TO PROTECT SOME NATIONAL SECURITY INTERESTS IN MAKING A DISCLOSURE OR THE DEGREE OF RECKLESSNESS SHOWN; WHETHER IT IS THE FIRST DISCLOSURE OR PART OF A SERIES; AND THE WILLINGNESS OF THE AUTHOR TO SUBMIT FURTHER DISCLOSURES FOR REVIEW.

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